



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

May 29, 1995

Ms. Tracy R. Briggs
Assistant City Attorney
City of Houston
P.O. Box 1562
Houston, Texas 77251-1562

OR95-306

Dear Ms. Briggs:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. We assigned your request an identification number, ID# 33034.

The City of Houston (the "city") has received a request for several pieces of information relating to the tenure of a cadet in the Houston Fire Academy. The cadet was discharged from the Houston Fire Academy on March 16, 1995. He has filed a charge of discrimination with the Equal Employment Opportunity Commission ("EEOC") relating to his termination.

You aver that the city has released to the requestor the cadet's civil service file. You claim section 552.103 of the Government Code, the "litigation exception," excepts the remainder of the requested information from required public disclosure. You have submitted for our review copies of documents that you indicate are representative samples of the requested information. See Gov't Code § 552.303 (requiring governmental body that requests attorney general decision on open records request to supply to attorney general specific information requested).

Section 552.103(a) of the Government Code excepts from required public disclosure information

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). The pendency of a complaint before the EEOC indicates a substantial likelihood of litigation and, consequently, sufficiently satisfies section 552.103. See Open Records Decision No. 386 (1983) at 2.

Absent special circumstances, however, once all parties to the litigation have obtained the information, for example, through discovery or otherwise, a governmental body has no section 552.103(a) interest to justify withholding that information. Open Records Decision Nos. 349 (1982) at 2, 320 (1982) at 1. Thus, while the city has demonstrated that section 552.103 applies to the requested information, section 552.103 does not permit the city to withhold from the requestor information that the cadet already has seen.

Your exhibits 4, 5, and 6 contain "representative samples" of quizzes and tests the cadet took, including the cadet's own tests, test and quiz answer sheets filled out by the cadet, and evaluations, signed by the cadet, of the cadet's performance on skill tests.¹ The city may not withhold documents in your exhibits 4, 5, and 6 because the cadet already has seen them. On the other hand, the cadet apparently has not seen the documents you have labeled exhibits 7 and 8. Pursuant to section 552.103, the city may withhold the information in exhibits 7 and 8 from the requestor. Our conclusion is good only until the litigation concludes.² Attorney General Opinion MW-575 (1982) at 2; Open Records Decision No. 350 (1982) at 3.

¹The cadet may not have seen one document in your exhibit 5. We have marked that document for your convenience. The city must release the document if the cadet has, in fact, already seen the record.

²We understand you have submitted only representative samples of material that you believe section 552.103 of the Government Code exempts from required public disclosure. This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent those records contain types of information substantially different from that submitted to this office.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination under section 552.301 of the Government Code regarding any other records. If you have questions about this ruling, please contact this office.

Yours very truly,



Kymberly K. Oltrogge
Assistant Attorney General
Open Government Section

KKO/RHS/rho

Ref.: ID# 33034

Enclosures: Marked documents

cc: Ms. Tina Andrews
Law Office of Tina Andrews
6100 Hillcroft Avenue, Suite 100
Houston, Texas 77081
(w/o enclosures)